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SUBJECT: BLACK ECONOMIC EMPOWERMENT - AN OVERVIEW

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1. (SBU) SUMMARY. The Broad-Based Black Economic Empowerment (BEE) Act, signed in January 2004, specifies that the Department of Trade and Industry will oversee the BEE process. DTI still has to create a critical advisory council and issue important guidelines. In the meantime, industry charters are proliferating without the benefit of these DTI resources. Post has faxed a current list of charters to the Desk. Adherence to empowerment objectives and targets is voluntary, but government procurement contracts provide preferential treatment to empowered companies and targets in sectoral charters encourage companies to purchase from empowered suppliers. U.S. firms broadly support BEE, but generally oppose a requirement to transfer equity. In some cases, American businesses feel that respective industry associations do not properly represent their interests. European chambers of commerce have politely rejected AmCham efforts to collaborate in the ICT Charter process, although the Europeans seem to share many of the same concerns that American companies have. Union leaders and senior politicians have recently criticized the implementation of BEE, claiming it is enriching the lives of a small black elite. END SUMMARY.

2. (U) President Mbeki signed the Broad Based Black Economic Empowerment Act of 2003 into law in January 2004. The Act creates an institutional mechanism for fulfilling social objectives outlined in the ANC's Reconstruction and Development Program (RDP). Adherence to empowerment objectives and targets is voluntary, but government procurement contracts provide preferential treatment to empowered companies. In addition, procurement targets in sectoral charters provide incentive for companies to purchase from empowered suppliers.

THE BROAD-BASED BEE ACT

3. (U) In general terms, the Act empowers the Minister of Trade & Industry (DTI) with overseeing the national policy on broad-based black economic empowerment. More specifically, it authorizes the Minister to form a BEE Advisory Council, issue Codes of Good Practice and publish transformation (industry) charters. The Advisory Council will advise government and industry on empowerment policy and the development of industry charters. In addition to publishing approved industry charters as Codes of Good Practice, the Department of Trade & Industry can also issue additional BEE guidelines as Codes. To date, the DTI has not yet formed the Advisory Council or issued Codes of Good Practice.

PROLIFERATION OF INDUSTRY CHARTERS

4. (SBU) The Government has actively encouraged the creation of charters in industries identified in the RDP as priority growth sectors - agriculture, tourism, culture, ICT, mining and metals, clothing and textiles, chemicals and biotech, and auto and transport services. Industry charters where U.S. business interests could be most affected include: ICT, Pharmaceutical, Automotive, and Agriculture. While industry charters are proliferating, there are still many sectors that have yet to initiate an empowerment discussion. Post has faxed to State's South Africa desk a list of industries that have initiated an empowerment discussion and the status of their respective charters.

THE SCORECARD

5. (U) In developing its strategy on BEE, the DTI issued a generic scorecard that, to date, has served as a model for

subsequent scorecards. The scorecard measures three "core elements" of BEE - direct empowerment, human resource development and employment equity, and indirect empowerment - plus a "residual" element, which typically measures corporate social investment programs. The scorecard breaks down the measurement into the following components:

Direct Empowerment	Equity Ownership Management
HR Development	Employment Equity Skills Development
Indirect Empowerment	Preferential Procurement Enterprise Development
Residual	TBD (e.g., CSI)

Each industry's respective scorecard is the basis for measuring business compliance with charter targets.

U.S. COMPANIES ON BEE

16. (U) American companies operating in South Africa support BEE objectives. This commitment can be traced back as far as the 1970s when U.S. firms in South Africa embraced the Sullivan Principles and established workplace equality practices and corporate social responsibility programs. Today, most American businesses in South Africa already comply with many empowerment criteria.

17. (SBU) The major sticking point for U.S. companies has been the component that requires the transfer of equity. U.S. firms generally oppose this requirement as a matter of corporate policy. Nevertheless, ChevronTexaco's CaltexSA subsidiary signed an agreement in 2002 to sell 25% of its South African operations to an empowerment consortium. Additionally, several American ICT companies in South Africa are considering employee shareholding schemes as a way to comply with the ICT Charter equity ownership component.

DO AMERICAN FIRMS HAVE A VOICE IN THE PROCESS?

18. (SBU) Industry charters are generally drafted by charter working groups led by steering committees, which are typically comprised of industry associations representing South African, foreign and black business, government, labor, and civic groups. Charter working groups frequently lack big business experience and do not understand the corporate complexities of a multi-national company. This underscores the need for businesses to work with and to educate the working groups and steering committees. For example, American ICT companies provide valuable feedback to the ICT charter working group by applying the draft scorecard to their companies and explaining the financial implications for them. While there has been no thorough analysis of the business costs of implementing empowerment targets, the financial services sector is committed to spending over R120 billion on funding BEE. At the company level, an accountant for an American ICT firm in South Africa recently told AmCham members that targets in the fourth draft of the ICT Charter would erase his profits.

19. (SBU) Some charter steering committees and working groups seem to have an agenda of their own that is antagonistic towards U.S. firms. Moreover, business association representatives sitting on the working group do not always accurately represent American (or foreign) business views. U.S. companies were particularly frustrated by the working group's rejection of their reasonable proposals in the ICT Charter process. Representatives of American firms in South Africa have discussed the possibility of creating their own Industry Association as a mechanism to increase their influence in the charter process. Company reps voted down the idea, however, due to fears of alienating the existing political process and players and antagonizing existing associations. European Chambers of Commerce have politely rejected AmCham efforts to collaborate in the ICT industry, although the Europeans seem to share many of the same concerns that American companies have.

BEE ELITE

10. (U) BEE is a reasonable effort by the government to address the legacy of apartheid. Its implementation, however, is creating controversy with black economic stakeholders who question its impact on most of the population. For example, ANC Secretary General Kgalema Motlanthe recently raised concerns about the concentration of empowerment equity in the hands of a few mega-rich black

business people. His remarks came shortly after Finance Minister Trevor Manuel berated black professionals for undermining the economy with increasingly excessive salary demands. COSATU General Secretary Zwelinzima Vavi and Deputy Finance Minister Jabu Moleketi have also weighed in against perceived enrichment of a small black elite. The media cites the following individuals in this category: Tokyo Sexwale, Cyril Ramaphosa, Saki Macozoma, Sandile Zungu, Fani Titi and Patrice Motsepe.

FRAZER